



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 30, 1992

Mr. David C. Caylor
City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

Open Records Decision No. 611

Re: Whether documents relating to a police department's investigations of family violence are excepted from required public disclosure under the Open Records Act, V.T.C.S. article 6252-17a (RQ-439)

Dear Mr. Caylor:

You have asked this office to determine whether documents relating to a police department's investigations of family violence are excepted from required public disclosure under the Open Records Act, V.T.C.S. article 6252-17a. In particular, you seek to withhold complaints containing allegations involving violence between family members and other information relating to the investigations of these complaints under sections 3(a)(1) and 3(a)(8) of the Open Records Act.¹

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Thus, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 409 (1984) at 1.

You argue that common-law privacy excepts from required public disclosure all information held by the department regarding investigations of family violence. We disagree. We cannot categorically maintain that information regarding violence between family members is highly intimate and embarrassing and of no public interest. An assault by one family member on another is a crime, not a family matter normally considered private. On the other hand, we can envision some circumstances under which the details of an assault and, possibly, the identity of the victim would be excepted from disclosure by common-law privacy. For example, if one family member sexually assaults another, at

¹Your requests, designated ID# 11473 and ID# 13309, also encompass information unrelated to the family violence complaints. In this decision, however, we will address only the information related to the family violence complaints. We addressed the other information in OR92-562.

least some of the information in the police department's file would be excepted from required public disclosure. *See* Open Records Decision No. 339 (1982) at 2-3. *But see Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (holding that the court could not prohibit a newspaper from publishing information in the public record relating to a rape victim's identity). The determination of whether the information in the file can be excepted from disclosure must be made on a case-by-case basis. *See, e.g., Industrial Foundation of the South*, 540 S.W.2d at 685 (stating that whether the matter is of legitimate interest to the public can be considered only in the context of each particular case).

We conclude that none of the information you presented us regarding the incidents of family violence is highly intimate and embarrassing and of no public interest.² Therefore, you may not withhold this information under the concept of common-law privacy.³

Section 3(a)(8) of the act excepts from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Traditionally, our office has distinguished between cases that are still under active investigation and closed cases when applying section 3(a)(8). In cases that are still under active investigation, this section excepts from disclosure all information except that generally found on the first page of the offense report. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 3(a)(8). *Open Records Decision No. 216 (1978) at 4.*

You argue, however, that all the information in both active and closed files relating to family violence, including the identity of the perpetrator,⁴ should be excepted from disclosure under section 3(a)(8) because release of the information would unduly interfere with law enforcement. In particular, you believe we should determine as a matter of law

²The incidents reflected in both files occurred between adult members of the family. Therefore, we do not address what, if any, information might be excepted from required public disclosure if one of the family members involved was a child.

³We are referring to the information designated ID# 11473 and Exhibit D of ID# 13309.

⁴You argue that, in cases of family violence, the identity of the perpetrator must be excepted from disclosure to protect the identity of the victim. Because we conclude that you must release the identity of the victim in these cases, we do not address this argument.

that releasing information about family violence would subject the victim and any witnesses to threats and intimidation and would make victims reluctant to report assaults.

We decline to make such a sweeping determination as a matter of law. Although we agree that family violence requires special treatment in some respects, we do not believe that the distinctions between family violence and other violent crimes support such a substantial departure from our previous applications of section 3(a)(8). In addition, we note that when the legislature wishes to protect information regarding victims of violent crimes, it enacts specific legislation. See Code Crim. Proc. chs. 56, 57. Therefore, we are reluctant to except additional information from disclosure without specific instructions from the legislature.

On the other hand, our previous interpretations of section 3(a)(8) and the informer's privilege under section 3(a)(1) do permit law enforcement agencies to withhold some information regarding violence between family members. For example, a law enforcement agency may withhold the identity of a witness when the abuser does not already know the witness's identity. See Open Records Decision No. 208 (1978) at 1-2 (applying the informer's privilege). Similarly, a law enforcement agency may withhold statements made by witnesses or victims if the agency establishes that disclosing the statements might subject the witnesses or victims to threats or intimidation. See Open Records Decision No. 297 (1981) at 2. These determinations must, of course, be made on a case-by-case basis. *Id.*

We note that the standards for excepting information from required public disclosure under the informer's privilege and under section 3(a)(8) will rarely permit a law enforcement agency to withhold the identity of the victim in cases of family violence. Because the perpetrator already knows the victim's identity, law enforcement agencies will rarely be able to show that releasing the victim's identity pursuant to an open records request will subject the victim to any additional risk of threats or intimidation.

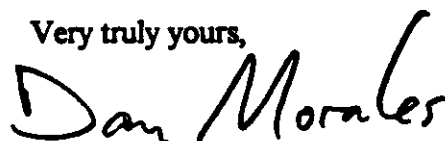
Using these guidelines, we conclude that you may withhold information related to any pending prosecution of a person for assaulting a family member, except for the information generally found on the first page of the offense report. See Open Records Decision No. 127 (1976) at 3-4. On the other hand, with regard to the records concerning closed cases, you have not met your burden of establishing that disclosure of any of the documents relating to family violence would unduly interfere with law enforcement. The information you sent us for review does not include any reference to witnesses other than the victims or any statements other than those made by the victims. With reference to the victims' statements, you have not submitted any evidence, other than the fact that the

perpetrator was a family member, to indicate that releasing the victims' statements might subject the victims to threats and intimidation.⁵

S U M M A R Y

Records held by law enforcement agencies regarding violence between family members are not excepted as a matter of law from required public disclosure by section 3(a)(1) or section 3(a)(8) of the Open Records Act, V.T.C.S. article 6252-17a. To withhold records regarding violence between family members under the concept of common-law privacy, a governmental body must demonstrate that the information is highly intimate and embarrassing and of no legitimate public interest. To withhold records regarding violence between family members, other than the information generally found on the first page of the offense report, under section 3(a)(8), a law enforcement agency must demonstrate that the case is still under active investigation or that release of the information would unduly interfere with law enforcement or prosecution.

Very truly yours,

A handwritten signature in dark ink that reads "Dan Morales". The signature is fluid and cursive, with the first name "Dan" and last name "Morales" clearly distinguishable.

DAN MORALES
Attorney General of Texas

⁵We also want to note that the information submitted to us for review reflects the victims' addresses at the time of the incidents; it does not reveal any new addresses or telephone numbers. Therefore, this decision should not be interpreted as authorizing or requiring a law enforcement agency to release the address or telephone number of a family-violence victim when that victim has attempted to escape the violence by relocating.

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